

## **BATH AND NORTH EAST SOMERSET COUNCIL**

### **LICENSING SUB-COMMITTEE**

Tuesday, 1st December, 2015, 10.00 am

**Councillors:** Paul Myers (Chair), Mark Shelford and Caroline Roberts

**Officers in attendance:** Alan Bartlett (Public Protection Team Leader), John Dowding (Senior Public Protection Officer) and Carrie-Ann Evans (Senior Legal Adviser)

#### **80 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

#### **81 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

#### **82 DECLARATIONS OF INTEREST**

There were none.

#### **83 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

There was none.

#### **84 MINUTES: 17 NOVEMBER 2015**

The minutes of 17 November 2015 were approved as a correct record and signed by the Chair.

#### **85 LICENSING PROCEDURE**

The Chair explained the procedure to be followed for Agenda Items 8-12.

#### **86 EXCLUSION OF THE PUBLIC**

The Committee having been satisfied that the public interest would be better served by not disclosing relevant information, **RESOLVED** that in accordance with the provisions of Section 100(A)(4) of the Local Government Act 1972, the public should be excluded from the meeting for Agenda Items 8-12 and that the reporting of the meeting should be prevented under Section 100A(5A), because of the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act, as amended.

#### **87 CONSIDERATION OF FIT AND PROPER PERSON IN THE ABSENCE OF A VALID DBS CERTIFICATE - MR DM**

The Senior Public Protection Officer reported that the licensee had had no contact with Public Protection and that he was not present. The Senior Legal Adviser reported that additional material information had come to light, which needed to be

laid before the Sub-Committee in a revised report, and advised Members to defer the meeting.

It was **RESOLVED** to defer the hearing of this matter to 15 December 2015 or the earliest date thereafter to allow the report to be updated.

#### Reasons

Members were due to determine what action to take against the holder of a combined Hackney Carriage/Private Hire Driver's Licence who has failed to provide a valid DBS Certificate.

Mr D M did not attend and had provided no explanation in relation to his absence.

Members were advised that further information had come to light which should be reported to the LSC and were therefore asked to consider deferring consideration of this matter in order that an updated report could be presented to them. Members considered this advice and in the interests of fairness, openness and transparency resolved to defer determination of this matter until 15 December or the earliest date thereafter where an updated report could be considered and the licensee would have the opportunity to present his case. The matter may proceed in Mr D M's absence if he fails to attend on the next occasion.

#### **88 APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE - MR RJC**

Mr R J C confirmed that he had received and understood the procedure to be followed for the hearing.

The Senior Public Protection Officer summarised the report. He provided Members with copies of a DBS certificate and a DVLA report concerning Mr R J C, a statement from him and a reference submitted on his behalf. The meeting was adjourned to allow Members time to read these documents.

When the meeting reconvened, Mr R J C stated his case and was questioned by Members. He did not wish to make a closing statement.

Following an adjournment the Sub-Committee **RESOLVED** to grant Mr R J C's combined Hackney Carriage/Private Hire Driver's Licence subject to the standard terms and conditions.

#### Reasons

Members have had to determine an application for a combined Hackney Carriage/Private Hire Driver's Licence. In doing so they took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy.

In making a determination Members took account of the applicant's oral representations, his statement and reference, and balanced these against the information provided by the Disclosure and Barring Service and DVLA.

The applicant explained the background relating to his convictions and his aspirations to be a taxi driver.

Members noted from the Policy that the Council will expect that an applicant will not have been convicted of three or more minor motoring offences during the previous three years and will not have been convicted of a serious motoring offence during the previous 5 years. Mr C's last minor motoring conviction was 4 years ago and his last serious motoring offence, for excess alcohol, was over 5 years old.

Whilst Members had some concerns regarding Mr C's motoring convictions, they found his explanations to be credible, and specifically noted that he recognised that it was absolutely vital to have insurance to drive a vehicle. Members did note however, that they would take a very dim view of any appearance of Mr C before LSC at a future date, involving convictions for similar offences.

Members took the view that on balance the applicant was a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence and accordingly, his application was granted.

## **89 APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE - MR PR**

Mr P R confirmed that he had received and understood the procedure to be followed for the hearing.

The Senior Public Protection Officer summarised the report and provided Members with copies of a DBS certificate relating to Mr PR, a statement from him and twenty-seven references submitted on his behalf. The meeting was adjourned to allow Members time to read these documents.

When the Sub-Committee reconvened, Mr P R stated his case and was questioned by Members. Mr P R made a closing statement. The Committee adjourned and was then reconvened, so that Members could seek clarification of something that Mr P R had said in his closing statement.

Following a further adjournment the Sub-Committee **RESOLVED** to grant Mr P R a combined Hackney Carriage/Private Hire Driver's Licence subject to the standard terms and conditions.

### Reasons

Members have had to determine an application for a combined Hackney Carriage/Private Hire Driver's Licence. In doing so they took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy.

In making a determination Members took account of the applicant's oral representations, his statement, character references and balanced these against the information provided by the Disclosure and Barring Service.

The applicant indicated that there had been a short, low period in his past, but he had rebuilt his life, had been conviction-free for 6 years and had not been involved in a driving accident in 31 years of driving.

Members noted that Mr R's most recent conviction was from 2009 and therefore he had been conviction-free for the period expected in the Council's policy.

Members took the view that on balance, the applicant was a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence, and accordingly his application was granted.

## **90 CONSIDERATION OF CONVICTION OBTAINED - MR JR**

On the advice of officers it was **RESOLVED** to defer the hearing of this application to the 15<sup>th</sup> December 2015 to allow Mr J R to seek legal advice.

### Reasons

The Licensee made a written request in advance of the LSC Meeting for a deferral of his application so that he could take legal advice. Members agreed to Mr J R's request, and decided to defer this matter to the 15 December 2015. The matter may proceed in Mr J R's absence if he fails to attend on the next occasion.

## **91 CONSIDERATION OF CONVICTION OBTAINED - MR ZM**

Mr Z M confirmed that he had received and understood the procedure to be followed for the hearing.

The Senior Public Protection Officer summarised the report. Mr Z M had received two convictions during the term of his Hackney Carriage/Private Hire Driver's Licence, so had been referred to the Sub-Committee in accordance with the Council's Policy. Mr Z M had notified him in July 2015 that he had been charged with two offences arising from the same incident. He had stated that he had initially intended to plead not guilty to both of them, but on legal advice had pleaded guilty to a lesser offence in place of the first charge, of which he had been convicted, and that the other charge had been dismissed. However, a DVLA report in respect of Mr Z M showed endorsements for two offences arising from the incident. The Senior Public Protection Officer provided Members with copies of the DVLA report. (A statement from Mr Z M had been circulated with the agenda report). The meeting was adjourned to allow Members time to read the DVLA report.

After the meeting reconvened, Mr Z M stated his case. He maintained that he had not committed the offences, and that it was not his vehicle that had been involved in the incident. He explained that he had thought that he had only been convicted of a single offence, because no penalty had been imposed in respect of the second charge. Mr Z M was questioned by Members. He did not wish to make a closing statement.

Following an adjournment, it was **RESOLVED** to issue Mr Z M with a stern warning in relation to his conduct.

Reasons

Members have had to determine what action to take against the holder of a combined Hackney Carriage/Private Hire Driver's Licence who has obtained convictions during the course of his licence. In doing so they took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy.

Consideration of this matter had been deferred from the meeting of the LSC on 17<sup>th</sup> November, on the request of the licensee.

In making a determination Members took account of the licensee's oral representations, his statement, character references and balanced these against the information provided by the DVLA.

In making his representations, the licensee stated he had originally pleaded not guilty to the offences because he had no knowledge of the incident and believed the whole matter was based on a case of mistaken identity. Whilst he was prepared for the matter to go to trial, in order to reduce the risk of damage to himself, and to guarantee his personal freedom, he pleaded guilty on legal advice.

In making their determination Members were aware that they were not there to re-open the conviction but rather to take account of the licensee's oral and written representations and determine whether or not the Licensee remained a fit and proper person. Further they were mindful that each case should be decided on its own merits and that they may depart from their policy where there are reasons for doing so. Members noted from the Policy, that a serious view will be taken of any conviction obtained by a licensee whilst acting in the course of their employment and where there has been a conviction for a serious motoring offence, for example failing to stop and report an accident, a licensee is expected to remain conviction free for a period of 5 years.

Whilst taking a dim view of the offences Members noted that:

- i. No complaints had been recorded against the licensee since he first obtained a licence in 2004.
- ii. He had reported the charges brought against him to the Licensing Team.
- iii. The apparent leniency of sentence imposed by the court – the licensee was given a moderate level of fine and 7 penalty points for the careless driving offence and no separate penalty for the offence of failing to stop and report an accident.

On balance Members find Mr M is a fit and proper person to continue holding a licence however, they issued Mr M with a stern warning that should he appear before the LSC again in relation to his conduct, he was at risk of having his license revoked.

The meeting ended at 1.35 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**